S.B. Civil Writ Petition No.8094/02

12.01.2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr. H.C. Ganeshia for petitioner.
Mr. B.S. Chhaba, Dy. GA for State.

This writ petition has been filed by petitioner Bhajan Lal inter alia with the prayer that the respondents be directed to pay to him a sum of Rs.20 lacs to maintain the third male child delivered by his wife Anokhi on 31.7.02 even after she was subjected to sterilization operation on 7.12.2001 in the Primary Health Centre of the Government at Baswa by Dr. J.L. Meena, Senior Medical Officer. According to the petitioner, he and his wife decided to go in for family planning and accordingly his wife offered herself for

sterilization. She thereafter conceived but she come to know about the same after six months of the pregnancy and at this stage it was not possible to abort the child. The respondent should therefore be required to pay the amount of compensation to him for maintaining the child.

The respondents have contested the writ petition and have argued that the petitioner and his wife did not take adequate care in getting the pregnancy terminated at the earlier stage. The operation of sterilization was conducted on 7.12.2001 but the writ petition has been filed two years thereafter. The wife of the petitioner had voluntarily offered herself for sterilization. It was submitted that there is possibility of failure of certain number of cases of

sterilization even after best of the precautions but such a eventuality cannot be descried as deliberate lapse on the part of the respondent or their medical officers. The petition involves disputed questions of fact. The negligence has not only to be alleged but has to be proved by cogent evidence, which cannot be done in writ jurisdiction. The writ petition is therefore liable to be dismissed.

Having considered the arguments of learned counsel for the parties and material on record I find that grant of compensation on account of vicarious liability of the State for the alleged negligence of its medical officers and consequential failure of the sterilization operation would have to be established on facts. Such an assertion cannot be accepted on mere ipse dixit of

the petitioner. Even otherwise, this controversy has been settled by a three Judge Bench of the Hon'ble Supreme Court in State of Punjab Vs. Shiv Ram & Ors. (Civil Appeal No.5128 of 2002) decided on August 25, 2005 which has been reiterated by another three Judge Bench of the Hon'ble Supreme Court in State of Haryana & Ors. Vs. Raj Rani, reported in 2005 (6) Supreme 56 in which it was held as under:-

> “A 3-Judge Bench of this Court has held in State of Punjab v. Shiv Ram & Ors. (C.A. 5128 of 2002 decided on August 25, 2005) that child birth in spite of a sterilization operation can occur due to negligence of the doctor in performance of the operation, or due to certain natural causes such as spontaneous recanalistion. The doctor can be held liable only in cases where the failure of the operation is

attributable to his negligence and not otherwise. Several textbooks on medical negligence have recognized the percentage of failure of the sterilization operation due to natural causes to be varying between 0.3% to 7% depending on the techniques or method chosen for performing the surgery out of the several prevalent and acceptable ones in medical science. The fallopian tubes which are cut and sealed may reunite and the woman may conceive though the surgery was performed by a proficient doctor successfully by adopting a technique recognized by medical science. Thus, the pregnancy can be for reasons de hors any negligence of the surgeon. In the absence of proof of negligence, the surgeon cannot be held liable to pay compensation. Then the question of the State being held vicariously liable and would not arise. The decrees cannot, therefore, be upheld.”

In the light of law enunciated by Hon'ble Supreme Court, the writ petition cannot be entertained and is accordingly dismissed. The petitioner may, if he so desires, approach the Civil Court. The petitioner would be free to request the Civil Court seeking benefit of Section 14 of the Limitation Act in bonafidely prosecuting the present remedy of writ petition.

With these observations, the writ petition is dismissed with no order as to costs.

(Mohammad Rafiq),J.

Rs/-